



FROM THE SHORE *Set your structure before the tide turns.*

COMPLIANCE & COUNSEL

Why Your LLC Needs an Operating Agreement

The one document that keeps your company — and your liability shield — seaworthy, long after the formation paperwork is filed.

TAMARA L. HARPER, ESQ. • 6 MIN READ • BUSINESS · FORMATION

Congratulations — you’ve formed your LLC. Once the state paperwork clears, your company still needs the right documentation in place to actually function and protect you.

An Operating Agreement is the legal document that sets out how your LLC will run. It is essential to owning and operating the company — and it carries real benefits while helping you avoid costly problems down the line. It is also where you address transfers of membership interest, provisions that ripple directly into your estate planning and asset protection.

AT A GLANCE What an Operating Agreement does

- 01 Customizes operations**
Tailor management and ownership instead of defaulting to state rules.
- 02 Maintains limited liability**
Reinforces the separation between you and the business.
- 03 Defines how decisions are made**
Sets voting power, authority, and deadlock rules.
- 04 Required by California law**
Every California LLC must have one in writing.
- 05 Evolves with your company**
Updated as members, structure, and life events change.

WHY IT MATTERS

The case for getting it in writing

A flexible structure is the great advantage of an LLC — but that flexibility only works in your favor when the rules are written down.

01 Customize how your business operates

A key advantage of an LLC is the freedom to build a flexible structure. Skip the Operating Agreement and you hand your business over to the default rules in your state's LLC statute. Draft one, and you — the Members — decide:

- ◆ how profits and losses are split among members;
- ◆ restrictions on the transfer of ownership interests;
- ◆ how the business pays its taxes; and
- ◆ who is authorized to sign on business accounts.

This list isn't exhaustive. Most aspects of an LLC can be designed to reflect the Members' wishes, unless the governing statute specifically forbids altering a particular right or duty.

02 Maintain members' limited liability

The hallmark of an LLC is limited liability — members generally aren't personally on the hook for the company's obligations. But that protection can be lost if you don't keep the business separate from its owners.

Creating and following an Operating Agreement is one practical way to do that; evidence that an LLC adheres to its agreement has supported members' limited liability in the past. The stakes are highest for single-member LLCs, where the liability veil is more easily pierced. Thoughtful planning strengthens the shield.

03 Define how decisions get made

A critical part of the agreement is how decisions are made — especially for multi-member and manager-managed LLCs, where several people may share authority. It is vital to spell out who can decide what.

You might create two or more ownership classes with different voting power, or authorize managers to make certain calls while reserving others for members. And decide in advance how deadlocks break: a tie-breaking member, or an independent third party.

“

Being proactive now — putting in writing how to handle Operating Agreement issues — gives you peace of mind and can save you hundreds of thousands of dollars in litigation later.

TAMARA L. HARPER, ESQ.

04 It's required by California law

California requires every LLC to have a written Operating Agreement. Without one, your company falls under the state's rigid default rules — and banks, investors, and lenders routinely require a signed copy before opening accounts or extending loans.

The agreement also establishes the business as a separate entity. Operate without one and you are out of compliance; in litigation, that gap can support piercing the liability veil to reach Members personally.

REQUIRED BY STATUTE

Cal. Corp. Code §§ 17701.02(s); 17701.13

Every California LLC must adopt a written Operating Agreement.

05 It must evolve with your company

Admitting a new Member, adding a Manager, creating new classes of Membership Interest, taking on an investor or raising money, or even a member's marriage — each is a reason to revisit and update the agreement with your attorney.

A **Joinder Agreement** may be needed to admit a new member. A **Spousal Certificate** protects the business through divorce, bankruptcy, or death — confirming a non-member spouse agrees to the company's rules and won't claim ownership or interfere with operations.



Calm seas favor the well-prepared.

FOR YOUR READING LIST

→ [California Secretary of State — Business Entity Types](https://sos.ca.gov/choosing-starting-your-entity)
[sos.ca.gov · choosing & starting your entity](https://sos.ca.gov/choosing-starting-your-entity)

A note from counsel

We know how to draft Operating Agreements that help your business run efficiently and avoid expensive litigation — and we'll flag how transfer-of-interest provisions affect your estate planning and asset protection. A short conversation helps us identify the key features your LLC needs.

LET'S TALK

Let's keep your LLC seaworthy.

Whether you're forming a new company or refreshing an existing agreement, schedule a virtual or in-office appointment to map the route ahead.

BOOK A MEETING →

CALL 805-409-0530 ↗

This article is provided for general informational purposes and does not constitute legal advice. For guidance specific to your business, please contact our office.